WIN FIRST BOUT WITH THE CIVIC LEAGUE

(From Wednesday's Daily.)

The first round of the contest between the Civic League and boxers, staged yesterday before Justice of the Peace Charles H. McLane at a preliminary hearing in the superior courtroom, resulted in a decision for the followers of the padded mitts' game. County Attorney O'Sullivan, after hearing the evidence, said there had been no prize fight and Judge McLane concurred, dismissing the ten defendants and exonerating their bonds.

Developments after the charges were dismissed, followed thick and fast. Two of the defendants, Phil Knight and Danny Mathews, were arrested upon new warrants secured by Attorney E. S. Clark of the Civic League legal staff. Justice of the Peace Moore issued the warrants before the conclusion of the hearing, contrary to the provision of the statutes. County Attorney O'Sullivan acquainted the justice with the rulings in the matter shortly afterward; that once a prisoner charged with a felony is cleared at any preliminary hearing to the satisfaction of the county attorney, he or she cannot be rearrested.

Knight and Mathews were released for the second time within two hours, but their taste of liberty was short. With equal alertness, the Civic League staff secured new complaints drawn up by Neil Clark, special agent for the Civic League and informant of the proceedings which took place at the alleged "prize fight," those who attended and the general points of interest in connection with the bouts. Mr. Clark swore out the third batch of complaints and Knight and Mathews were taken into custody about 8 o'clock last night.

Justice of the Peace Moore could not be reached until about 10 o'clock when he fixed the bonds of the two defendants. Bondsmen were on hand and the two boys were given their liberty to await further action.

If Attorney E. S. Clark carries out his promise, Attorney General Bullard will be brought into the fray and will personally assist in the case.

Fifteen witnesses representing the cream of Prescott business and professional circles were called by the prosecution to testify at the preliminary hearing in the afternoon. In practically not one single instance did the testimony in any way incriminate the defendants. Experts vouched for the bouts being of strictly boxing flavor and not of the "prize ring" class. The witnesses had been summoned because they were spectators at the alleged "prize fight."

Sparks of action commenced to fly fast and thick when after three hours of examination of witnesses County Attorney O'Sullivan read his motion dismissing the cases and giving his reasons for advocating such a course. Then arose Mr. Clark. Briefly and to the point, he declared that he had anticipated the county attorney's move and had sworn out new warrants for the arrest of the principals, adding that he would leave at once for Phoenix to procure the co-operation of Attorney General Bullard.

bonds exonerated and the defendants told to go.

Panic alighted early in the camp of the Civic League. County Attorney O'Sullivan had canvassed the situation thoroughly before the hour for the hearing was even called. Witnesses procured were unanimous in their expression that even the semblance of a prize fight was not in evidence at the affair of the Prescott Athletic Club Friday night. Following out his hitherto unalterable policy of saving the county expense via the dismissal route when conviction by a jury in the superior court appeared impossible the county attorney realized his course early.

The evidence furnished by the prosecution's witnesses was favorable to the defense.

The crowded courtroom sat in breathless interest. Quite frequently the humorous phases of the hearing became conspicuously apparent and on two different occasions loud peals of applause shook the building when counsel indulged in tilts. Practically every man and woman in the courtroom felt a personal concern in the outcome, and the sparks that flew with the clashes of the rapiers of wit evoked comments and audible.

With this announcement, the session was declared at a close, and emotions which brought the presiding official's gavel into use.

The crowd was thoroughly representative. Of the 300 or more in the courtroom fully fifty were women. Civic League committee to be on hand at the stag, and procure data, men and the most of this number belonged to the Civic League. Every seat was taken and standing room "sold" at a premium long before 2 o'clock when the first witness was called to the stand.

Over fifty witnesses had been summoned by the prosecution. Equally that number had been procured by the defense. After sixteen had been examined by the prosecution, the State rested. But two witnesses were called by the defense, the county attorney then following with his dismissal motion.

Tilts between Attorneys Clark and Anderson finally reached that climax where the two rallied to the front their greatest oratorical ability and participated in one of the prettiest legal set-to's ever heard in a court room.

William Eble, an active member in the managerial staff of the Prescott Athletic Club, was called as the first witness for the prosecution. Mr. Eble was quizzed regarding the admittance of members, fees, etc. In a row were then placed upon the stand County Superintendent of Public Health Dr. John W. Flinn, City Health Officer Dr. H. T. Southworth and State Health Officer Dr. R. N. Looney, all of whom were spectators at the alleged "prize fight."

A ripple of laughter followed the approach of each physician to the witness stand. A woman spectator applauded with her hands when Dr. Flinn, in replying to the question: "Do you mean Mr. Bartlett sitting here?" said, "Yes, the deputy sheriff. He was the referee." The doctor had paid no entrance fee. He had been brought to the stag by a friend.

Dr. Southworth pleaded ignorance of the technical difference between the terms "prize fighting" and "boxing." He declared that he had examined one of the contestants after the bout was over and had pronounced him "O. K.," despite his claim of a foul. Dr. Looney had a pretty good seat, said the State health officer upon examination, but not quite as good as he would have liked to have had.

Dr. Hartzell, a local dentist admitted that he hadn't gone down to the stag to pull teeth, but that he went there for entertainment. All three health officers remained as interesting spectators of the quizzes at the expense of others.

Morris Miller, sporting editor of the Journal-Miner, followed Dr. Hartzell upon the stand. Mr. Miller denied ever playing ping-pong and disclaimed any ownership to the term "sport," when the relative titles were bestowed very graciously by counsel for the two sides. The exhibitions of Friday night were termed boxing contests in every sense of the word.

The prosecution then sprang a surprise by summoning Attorney F. L. Haworth of the defense to the stand. The move struck Attorney Anderson so funny that he remarked between peals of laughter: "My. But they must be hard up for testimony."

Mr. Haworth questioned Attorney Clark's knowledge of the game in a manner which made all hands sit up and take notice. Mr. Clark had asked which way the decision went if a scrapper who had outpointed by his greater skill and ability his opponent, should suddenly hit the canvas and be counted out. Mr. Clark was aiming to prove that punching and brute ability were as essential factors in boxing as were cleverness and science. Mr. Haworth parried the blow by saying that it wasn't clear to him how a more scientific boy after sailing in the head could hit the canvas. Such conjecture failed to concur with the common reason of the squared arena, he said.

City Attorney E. J. Mitchell proved another classy "prize package" for the defense when placed upon the stand by the prosecution. Harry Brisley, a prominent local druggist was followed by Attorney Richard P. Talbot. Mr. Talbot solemnly avered that he hadn't received his money's worth at the stag. City Police Magistrate Robinson was handled rather roughly by Mr. Clark upon the stand.

Raymond Belcher, clerk of the board of supervisors was followed by City Collector Frank Williams. Mr. Williams said that he had been sitting away up in the roost enjoying the gentle art of self-defense.

After City Police Officer Robert Robbins and Deputy Sheriff Joe Young had been examined, the prosecution called to the stand Miss Emma Roe Shannon, until recently superintendent of the Associated Charities and one of the three Civic League members who swore to the complaint. The summoning of Miss Shannon caused a ripple of excitement.

Briefly and to the point the witness related the experiences of the night in question. She declared that Neil Clark and Rev. Jenkins had been assigned as "witnesses" by the Rev. Jenkins' efforts to secure admission failed on the grounds that he had not been initiated, while Mr. Clark easily secured admittance. The result was conspicuous in the amount of accurate data available to the Civic League attorney.

Continuing, Miss Shannon told how the committee of three had attempted to effect an entrance to the hall and how she had put one foot inside the door only to be repulsed and the door shut in her face. The committee then camped outside, heard the clang of the gong and saw the crowd going in.

After quoting the definition of a "prize fight" as contained in the dictionary, she told of her past experiences in the campaign to put the lid on "prize fights." Then followed the most interesting tilt of all the proceedings.

Mr. Anderson asked Miss Shannon whether she knew of her own knowledge that there had been a prize fight when she had signed the complaint. The question opened a great gap for conjecture. Mr. Clark intimated a lack of courtesy upon Mr. Anderson's part in springing the question.

Mr. Anderson took the comment in the way he presumed it was intended. Before the smoke of battle had cleared away, Mr. Anderson had delivered himself of a gem of oratory which brought forth an outburst of applause from three-fourths of the throng in the room. In conclusion, Mr. Anderson said: "I have a mother that's as good and dear to me as counsel's mother. I have a wife that's as good and dear to me as counsel's wife, and I have a sister that's as good and dear to me as counsel's sister, and they all stay at home and mind their own business."

Mr. Clark replied with an acknowledgment of Mr. Anderson's contentions, but insisted that he was trying to bull-doze in this special instance. Mr. Anderson replied that he was not; he was simply attempting to show how a poor, defenseless woman had been led astray; practically into committing perjury.

Miss Lucy Howe Jenkins, the second of the signers to the complaint, continued the "slamfest" by declaring that Attorney Haworth of the defense had told her that the local boxing game was a violation of the law. Mr. Haworth undertook to cross-examine her and managed to give another interpretation of the consultation held in his office when he declined to act as counsel for the Civic League. She was followed upon the stand by Mrs. Marrietta Staples, president of the league, and third signer of the complaint.

The prosecution rested at this juncture, the county attorney asserting that more than forty other witnesses were available, but all possessed the same line of testimony. A recess of ten minutes was ordered.

After the recess, Ben Silverman was called to the stand by the Civic League and testified that he had made a wager upon the "fight," as he termed it. William Duncan, one of the two witnesses placed upon the stand by the defense, gave a scientific and accurate description of the contest in question, delivered a summary of the boxing game from an expert's viewpoint and clearly maintained that the bouts on Friday night were simply boxing affairs.

The defense then reaped "revenge" because of the prosecution's prank in calling Attorney Haworth to the defense. Attorney Anderson summoned Assistant County Attorney Joseph H. Morgan, who was a ringside spectator at the stag. Mr. Morgan declared that the McMahn-Fitzgerald bout was a sparring exhibition pure and simple and that the other bout was a glove contest. Morgan further imparted the interesting knowledge that he had met McMahn, the local promoter, upon the street, and instructed him to positively refrain from staging other than boxing contests in this city. He was at the ringside to see that his instructions were enforced, he declared.

Last night's maneuvers came so thick and fast that a Journal-Miner reporter was kept upon the jump for several hours finding out whether the most recent was the last of the night. Up until midnight, Knight and Mathews had availed themselves of the record of having been arrested three times for the same alleged felony within four days.

In asking to have the cases dismissed, County Attorney O'Sullivan took occasion to put himself on record by reading his motion from a typewritten document. He adopted this course, he declared, so there would be no mistake as to his attitude in the premises. His motion was as follows:

IN THE JUSTICE COURT OF PRESCOTT PRECINCT, COUNTY OF YAVAPAI, STATE OF ARIZONA.

The State of Arizona, plaintiff, vs Phil Knight, Daniel Mathews, Willie Fitzgerald, Jack McMahn, Sam Kraus, Ed Hill, Fred Ellis, Floyd Williams and Robert Laukan, defendants. Motion by the County Attorney.

Comes now the County Attorney of Yavapai County and makes the following statement and motion in the above entitled case.

The statute under which the complaint in the case was drawn is as follows:

Every person who engages in, instigates, encourages or promotes any ring or prize fight or any other premeditated fight or contention (without deadly weapon), either as principal, aid, second, umpire, surgeon or otherwise, is punishable by imprisonment in the Territorial (State) prison not exceeding two years.

It will be observed that the above statute applies to all premeditated ring or prize fights or contentions. The word "contention," as used in the statute, under well-known rules of statutory construction, must be confined to the contentions previously mentioned, to wit: Ring or prize fights, because if not so confined, it might be also applied to a basketball contention a baseball contention, or any other contention. It is therefore apparent that the word "contention," as used in the statute, simply applies to ring or prize fight contentions and to no other.

Under the law, a fight must have occurred to come within the purview of the statute. This proposition cannot be successfully controverted.

In the case of State vs. Purtell et al., 43 Pac. Rep. 782, the Supreme Court of Kansas, in reversing a judgment of conviction for prize fighting, used this language:

The Court (meaning the lower Court) instructed the jury that the word "prize fight," as used in the statute, means a fight or physical contest between two parties for a prize or reward; and the phrase "fight or physical contest," or the expression "fight or contest," is repeated many times in the instructions.

By this the Court gave the jury to understand that it need not be a fight, but that a physical contest for a prize or reward was punishable under the statute. This is not the law. There are many physical contests which are not only not punishable, but altogether permissible.

It was conceded that the defendants engaged in a physical contest. It was even conceded that they engaged in a boxing match, but it was not admitted that they fought. It is a fight only that the statute reaches. Wrestling, fencing, boxing and numberless other matches, in which the physical powers are employed by men in friendly contests with each other, are not punishable. It must be a fight. The word "fight" implies a purpose to inflict injury.

In the Kansas case that I have quoted, 22 rounds of sparring took place; one of the contestants was knocked down, and failing to get up, was declared beaten. The only question was whether it was a prize fight or a sparring exhibition; if a prize fight, it was unlawful; if only a sparring exhibition, then it was lawful.

The Supreme Court of Kansas, as before stated, reversed the judgment and sentence of conviction because the lower court misdirected the jury as to the law.

As County Attorney, it is my duty to prosecute all criminal offenses committed within Yavapai County. When complaints are made to me, I draft criminal complaints and cause warrants of arrest to be issued, and then a preliminary examination follows. After a full investigation of all the evidence, pro and con, I am usually able to determine whether a public offense has been committed, and whether there is sufficient evidence to warrant a conviction. If, after hearing all the proofs at a preliminary examination, I am satisfied that the evidence would not warrant a conviction in the Superior Court, and that a trial jury would not convict, I do not hesitate to dismiss the criminal charge preferred. I consider it my positive duty to do so. As County Attorney, why should I put Yavapai County to a great amount of needless expense when I know that no trial jury would convict? While I am County Attorney of this County, I shall not hesitate to dismiss a criminal prosecution, after I hear the evidence at a preliminary examination, provided I am satisfied that no conviction could be had before a jury in the Superior Court. To do otherwise would be a rank injustice to the tax-payers of this county. I would be guilty of squandering the tax-payers' money in futile attempts to convict, when I knew beforehand that there was no possible chance to secure a conviction.

In the case at bar, the defendants have been arrested on the charge of engaging in, instigating, encouraging and promoting a ring or prize fight. The testimony is all in, and it now becomes the duty of the Court to either hold the defendants to the Superior Court or discharge them. It appears from the evidence that a boxing exhibition was given by the Prescott Athletic Club on the night of January 9, 1914; that four of the defendants indulged in the boxing bout, and that the other defendants acted as seconds, seconds and referees.

All we can go by is the evidence have placed on the witness stand in this case, some of the leading and most honorable citizens of Prescott, including lawyers, doctors, business men, newspaper men, county and city officers, and others. These men were present during the exhibition and they are practically unanimous in testifying that it was not a prize fight, but a boxing exhibition. It also appears that two deputy sheriffs of Yavapai county, two members of the city police force, the city police judge, the assistant county attorney and the city attorney of Prescott were all present during the exhibition and witnessed the whole affair. It is hardly conceivable that those sworn officers of the law would be particeps criminis to the commission of a felony; and if the exhibition degenerated into a prize fight, it seems reasonable to presume that said officers would immediately take a hand and then and there arrest the participants.

From the evidence introduced, I feel that it has been proven almost, if not quite, conclusively that the affair was not a prize fight, but a boxing or sparring exhibition, which the laws of Arizona do not denounce as a crime.

I am thoroughly convinced that no grand jury of Yavapai county would ever indict, after hearing all the evidence in the case, and I am convinced to a moral certainty that no trial jury of Yavapai County would ever convict, if the defendants were held to the Superior Court, and I am not satisfied that even if convicted, such conviction, under the facts, would be sustained by the courts. Under such circumstances, I have no hesitation in asking this Court to dismiss all the defendants and exonerate their bonds.

P. W. O'SULLIVAN,
County Attorney.

SEVERE PUNISHMENT

Of Mrs. Chappell, of Five Years' Standing, Relieved by Cardui.

Mt. Airy, N. C.—Mrs. Sarah M. Chappell of this town, says: "I suffered for five years with womanly troubles, also stomach troubles, and my punishment was more than any one could tell.

I tried most every kind of medicine, but none did me any good.

I read one day about Cardui, the woman's tonic, and I decided to try it. I had not taken but about six bottles until I was almost cured. It did me more good than all the other medicines I had tried, put together.

My friends began asking me why I looked so well, and I told them about Cardui. Several are now taking it."

Do you, lady reader, suffer from any of the ailments due to womanly trouble, such as headache, backache, sideache, sleeplessness, and that everlastingly tired feeling?

If so, let us urge you to give Cardui a trial. We feel confident it will help you, just as it has a million other women in the past half century.

Begin taking Cardui to-day. You won't regret it. All druggists.

Write to: Chattanooga Medicine Co., Ladies' Advisory Dept., Chattanooga, Tenn., for *Special Instructions* on your case and 64-page book, "Home Treatment for Women," in plain wrapper. N.C. 134

a dozen cold-blooded murderers have been commuted without legal or moral exercise we reproduce part of the opinion referred to, and recommend its careful perusal by our readers. In its syllabus, the Oklahoma court says:

"No official of Oklahoma has the shadow of a right to set aside or disregard the laws of this State, as a matter of whim or caprice. Officials should set an example of obedience to law. If they disregard the law, how can they blame the people for taking the law into their own hands? The governor is without the lawful right to set aside and nullify the law inflicting the death penalty for crime in all cases upon the ground that he is opposed to capital punishment."

Discussing the subject further in the body of the decision, the court says:

"It is a matter known to all persons of common intelligence in the State of Oklahoma that the governor takes the position that legal executions are judicial murder; and that he refuses to permit them to be carried into effect upon the ground that he would thereby become a party thereto. As this is a capital conviction and as the governor's action presents an absolute bar to the enforcement of the law of Oklahoma we cannot, without failure to discharge our duty, omit to take judicial notice of and pass upon this position of the governor, as unpleasant as it is for us to do so. If we remained silent, the governor and the people would have a right to think that we acquiesced in this position he has assumed.

"There is no provision of law in Oklahoma which requires the governor to approve a verdict assessing the death penalty before it can be executed. His duty with reference to such verdicts is negative and not affirmative. He has nothing whatever to do with them, unless he may be satisfied that an injustice has been done in an individual case; then he may commute the sentence or pardon the offender; but this can only be done upon the ground that, upon the facts presented, the defendant was a fit subject for executive clemency, and that an exception should be made in his favor as against the general rule of law.

"It is not true that when a defendant is executed according to law the governor is in any way responsible therefor. The execution takes place in obedience to law and not because the governor orders it; and the governor has not a shadow of legal or moral right to interfere with the law, unless he can say upon his official oath that special reasons, applicable alone to the given case before him, justify such action. The governor's alleged conscientious scruples with reference to the infliction of capital punishment cannot lawfully justify his action in a wholesale commutation of death penalties. The governor has no legislative powers at all; he can neither enact nor repeal laws either directly or indirectly which he does attempt to do when he sets aside the death penalty in all murder cases. The law recognizes the fact that some good men are honestly opposed to the infliction of capital punishment, but it prohibits such persons from passing upon this question. The law is as follows: 'If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.' This provision of law precludes the governor from commuting a death penalty, in a single case, upon the ground of his alleged conscientious scruples. So it is seen that he is not only not compelled to approve such a verdict, but that he is positively forbidden by law to allow his scruples to influence him in the least in his action. It would indeed be an idle thing for the legislature to enact a law and then make its execution depend upon the whim or caprice of any juror or governor. If the governor's position is correct, then we do not have a government of law in Oklahoma, but a government of men only. If it were necessary for the governor to approve such verdicts before they could be carried into execution, then the governor should have made his views known before he was elected, and he should have refused to take the oath of office. There is no logical escape from this conclusion. The governor's position can only be explained upon the hypothesis that he imagines himself to be a dictator, and that his will is supreme and above the law. In this the governor is mistaken.

"If it be conceded that the governor's position is correct, and that he has the right to suspend the execution of any provision of law, of which he may not approve; and if it be true that the other officials of the State are answerable to him, and not to the people—then we have an empire in Oklahoma and not a free State. This would establish a precedent which would justify any subsequent governor, who might be opposed to the prohibitory liquor law, to commute all jail or penitentiary sentences inflicted in such cases upon the ground that he did not like the law, and that he knew better than the people what should be done in such cases. The same principle would apply to all laws. Concede the principle contended for by the governor, and where will the matter end? It would utterly demoralize the enforcement of law in Oklahoma, and would convert the State government into one of men and not of law. What do the people of Oklahoma think of this?

"The law of Oklahoma prescribes the penalty of death for willful murder. This punishment, like most of our penal laws, was taken by the legislature from the divine law. In the thirty-fifth chapter of the Book of Numbers, the Bible says:

"'Moreover ye shall take no satisfaction for the life of a murderer; which is guilty of death; but he shall be surely put to death. And ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land until the death of the priest.

"'So ye shall not pollute the land wherein ye are; for blood defileth the land; and the land cannot be cleansed of the blood of him that shed it.

"'Defile not therefore the land which we shall inhabit; wherein, I dwell; for I, the Lord, dwell among the children of Israel.'

"We are also told in the nineteenth chapter of Deuteronomy:

"'That innocent blood be not shed in they land, which the Lord thy God giveth thee for an inheritance, and so blood be upon thee.

"'But if any man hate his neighbor, and lie in wait for him, and rise up against him and smite him mortally that he die, and fleeth into one of these cities:

"'Then the elders of his city shall send the avenger of blood, that he may die.

"'Thine eye shall not pity him, but thou shalt put away the guilt of innocent blood from Israel, that it may go well with thee.'

"Many other passages of Scripture can be quoted to the same effect, for the Bible is absolutely unanimous in its statements that the legal punishment for willful murder shall be death.

"This is a question for the people or the legislature alone. The supreme question is: Shall the laws of Oklahoma be enforced? One of the most mischievous tendencies of the present day is a disposition manifested among the people to set their individual judgment up against the law, and to assert their right not to obey any law unless it meets with their personal approval. This is anarchy, pure and simple. It is bad enough for private citizens to feel and act this way, but it is much more criminal for officials to do so, and the higher the official the greater the crime committed. All State officials have taken an oath to support the laws of the State. No governor has the right to say, directly or substantially, either by words or by actions, which speak louder than words: 'I think that capital punishment is wrong. I know that it is taught in the Bible, and is provided for in the laws of Oklahoma, but I occupy a higher plane than this. I am not such a barbarian as to believe this is right. I am a better judge of what punishment should be inflicted than is taught in the Bible, or than the ignorant, savage and bloodthirsty people of Oklahoma have provided for in their laws. Therefore, notwithstanding my official oath, I will place my judgment above the law, both human and divine, and make my will supreme in this State, and will not permit capital punishment to be inflicted in Oklahoma, no matter what the law is or how atrocious the offense committed may have been. All officials are only my personal servants and it is their duty to execute my orders, and not stop and inquire as to what the law is. The courts must recognize and bow to me as their master, and accept and follow my will as the supreme law; and if they dare to question my absolute right to do as I please about anything I will publicly brand such judges as fools and crooks, and charge that they have entered into a conspiracy with criminals and that they are using the law as a cloak to protect crime.'"

PARALLEL CASE TO ARIZONA SITUATION.

(From Wednesday's Daily.)

Oklahoma has a Supreme Court of which it should be proud, but unfortunately it has a governor, who like the chief executive of this State, believes he is mightier than the law. These two men, who by fortuitous circumstances occupy high positions, have set the expressed will of the people and the judgments of the courts at naught and made the observance of law a sham and a mockery by the examples they have set. But in Oklahoma the Supreme Court has the temerity to speak out its opinion of lawbreakers, be they governor or the ordinary criminal.

There the governor, acting on the theory that capital punishment is judicial murder, has been setting aside the death sentence by commutation, the laws of the State notwithstanding.

This action is discussed at some length by the Supreme Court of that State. As the circumstances are parallel with the situation in this State, where the sentences of about

WATERY GRAVE.

HAMBURG, Germany, Jan. 17.—No doubt remains that the German steamer Acilia is lost with her crew of forty-eight or fifty passengers. A telegram from Punta Arenas, Chile, received today, says that the bodies of two of the officials of the steamer were picked up among the wreckage in Moat channel.